STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 1, 2011
v	No. 299327 Muskegon Circuit Court
HANK WILLIAM JONES, Defendant-Appellant.	LC No. 10-058806-FH

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of operating a motor vehicle while intoxicated (OUIL), MCL 257.625(1), third offense; attempted larceny under $200, MCL 750.356(5); and transporting or possessing an open container of alcohol in a vehicle, MCL 257.624a. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 4 to 30 years' imprisonment for his OUIL conviction, to be served consecutively to another sentence for which he was on parole. Defendant was also assessed state costs for the attempted larceny and open container convictions. Because sufficient evidence was presented to support defendant's convictions, we affirm.

On the night of December 13, 2009, defendant drove to a Wesco gas station. Witnesses observed defendant pump gas and then speed across the parking lot, nearly hitting a customer. According to one witness, defendant had an open container of beer in his vehicle and placed it in a garbage can. When defendant approached the gas station, he did not have money to pay for the gas he had pumped and was, according to witnesses, acting erratically. Another customer assisted in preventing defendant from leaving the gas station in his vehicle without paying. When police responded to the gas station, the responding officer observed that defendant's speech was slurred and that he smelled of alcohol. The officer also saw cans of beer in the passenger side of defendant's car and retrieved an open, partially full can of beer from the garbage can when told that defendant had placed one there. The officer arrested defendant, and a blood test performed on him approximately two hours later ultimately reported 0.12 grams of alcohol per 100 milliliters of blood.

On appeal, defendant argues that there was insufficient evidence to convict him of OUIL. Specifically, he contends that there was insufficient evidence to prove that he drove while under the influence of intoxicants or that his blood test reflects his blood alcohol level (BAL) at the time he drove. We disagree.

"[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Moreover, this Court must make all reasonable inferences and resolve all conflicts in the evidence in favor of the prosecution. *People v Solmonson*, 261 Mich App 657, 661; 683 NW2d 761 (2004); *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

"[U]nder MCL 257.625(1), [OUIL] requires proof of three elements: (1) the defendant operated a motor vehicle (2) on a highway or other place open to the general public or generally accessible to motor vehicles (3) while under the influence of liquor . . . *or* with a blood alcohol content of 0.08 grams or more per 100 milliliters of blood." *People v Hyde*, 285 Mich App 428, 448; 775 NW2d 833 (2009). Circumstantial evidence may be sufficient to prove defendant operated a motor vehicle under the influence, *Solmonson*, 261 Mich App at 661, and a defendant's BAL at the time of his blood test is presumed to be his BAL at the time he operated the vehicle. MCL 257.625a(6)(a).

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to find defendant guilty of OUIL. *Wolfe*, 440 Mich at 515. Again, the arresting officer testified that defendant's speech was slurred and that he smelled of intoxicants. Two witnesses testified that they observed defendant driving in a manner that was at least unsafe, if not erratic (i.e. speeding across a parking lot and almost hitting another customer). Witnesses also testified concerning additional other erratic behavior on defendant's part, as well as his having bloodshot eyes. The above evidence, combined with the fact that alcohol was found in his vehicle, support a finding that defendant drove while under the influence. *Hyde*, 285 Mich App at 449; *Solmonson*, 261 Mich App at 661; *People v Lounsbery*, 246 Mich App 500, 501-502; 633 NW2d 434 (2001).

Additionally, defendant's BAL exceeded the statutory limit and is presumed to reflect his BAL at the time he drove. MCL 257.625a(6)(a). While defendant testified that he drank some alcohol in the few minutes between the time he arrived at the gas station and the time the police arrived, the trial court was free to believe or disbelieve this testimony. The trial court rather clearly disbelieved defendant's testimony on this issue, and we will not engage in retroactive review of such credibility determinations. See, e.g. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Defendant did not overcome the presumption set forth in MCL 257.625a(6)(a).

Affirmed.

/s/ Jane E. Markey
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause